

To the Honorable Council City of Norfolk, Virginia

February 8, 2022

From: Robert Carteris

Asst. Director of Utilities

Subject: Hampton Roads Sanitation Cost

Sharing Agreement

Reviewed: Ward/Superward: Citywide

Patrick Roberts, Deputy City

Manager

Approved: / / / / / / Item Number: R-7

Dr. Larry H. Filer II, City Manager

I. Recommendation: Adopt Ordinance

II. Applicant: City of Norfolk

III. Description:

This agenda item is an ordinance authorizing a cost sharing agreement with the Hampton Roads Sanitation District (HRSD) for improvements to the Botanical Gardens Wastewater Pump Station.

IV. Analysis:

- HRSD's closure of its Chesapeake-Elizabeth Wastewater Treatment Plant will divert flows to its Atlantic Treatment Plant. This diversion will cause an increased pressure level in its interceptor conveyance system.
- The City's wastewater Pump Station No. 124 at the Botanical Gardens discharges to this
 interceptor conveyance system but cannot continue against this higher pressure
 without improvements. HRSD has agreed to pay for specific improvements to
 accommodate the new pressure.
- The City is currently constructing the necessary improvements to the wastewater pump station that will enable it to pump against the higher system pressure and some minor betterments.

• Due to the age of this wastewater pump station, improvements that would have been necessary in the future, in effect, are subsidized in part by HRSD financial participation.

V. Financial Impact:

- The current estimated cost of the construction of the improvements is \$610,000.
- HRSD will be responsible for reimbursing the City 81 percent of the cost, or \$494,100.
- The City will be responsible for 19 percent of the cost, or \$115,900.
- To date \$585,271 has been encumbered for this purpose using the following accounts numbers and amounts.

Account No. 5200-34-3082-5582-FY21, Amount: \$552,200 Account No. 5200-34-3082-5582-FY18, Amount: \$33,071

VI. <u>Environmental:</u>

These improvements will help ensure that there is no negative impact to natural resources and the surrounding neighborhood.

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action:

N/A.

IX. <u>Coordination/Outreach:</u>

This letter and ordinance have been coordinated with Department of Utilities and the City Attorney's Office.

Supporting Material from the City Attorney's Office. Ordinance

Supporting Material:

Ordinance Exhibit A (PDF)

Form and Correctness Approved:

847

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose

Office of the City Attorney

Contents Approved:

By: ____ Utilities Shenette Felton, Director of Finance

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE AUTHORIZING A COST SHARING AGREEMENT WITH HAMPTON ROADS SANITATION DISTRICT FOR IMPROVEMENTS TO THE BOTANICAL GARDEN WASTEWATER PUMP STATION.

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the cost sharing agreement to be entered into between the City of Norfolk and Hampton Roads Sanitation District for improvements to the Botanical Garden wastewater pump station is hereby authorized.

Section 2:- That the City Manager is hereby authorized to negotiate and execute an agreement, substantially in the same form and terms as in the agreement hereto attached as Exhibit A, satisfactory to the City Attorney and consistent with this ordinance.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

ATTACHMENTS:

Exhibit A (12 pages)

CERTIFICATION OF FUNDING

Account No. <u>5200-34-3082-5582-FY21</u>, Amount: <u>\$552,200</u> Account No. <u>5200-34-3082-5582-FY18</u>, Amount: \$33,071

EXHIBIT A

COST SHARING AGREEMENT BETWEEN THE CITY OF NORFOLK AND HAMPTON ROADS SANITATION DISTRICT FOR WASTEWATER PUMP STATION UPGRADES (PROJECT #CE011836)

THIS COST	SHARING AGREE	:MENT ("Ag	reement"),	between	the CITY	OF
NORFOLK ("City")	and the HAMPTON	I ROADS SA	NITATION	DISTRICT	「 ("HRSD")), is
entered into this	day of	, 2022_	("Effecti	ve Date").		

RECITALS

- **R:1.** The City owns, operates and maintains the existing Wastewater Pump Station No. 124 (WPS #124).
- **R:2.** Under HRSD project #CE011836, HRSD shall finance and pay for specific upgrades to the City's WPS #124 in order to accommodate the new HRSD system pressure at the station tie-in location when HRSD closes the Chesapeake-Elizabeth Treatment Plant and diverts ("Diversion Improvements") the flow to the Atlantic Treatment Plant.
- **R:3.** The City shall construct the modifications to its existing WPS #124 (City facility") as part of the Norfolk Botanical Garden pump station improvement project ("Project").
- **R:4.** The design and construction of the Diversion Improvements will require the replacement of the pumps and associated ductile iron pipe and appurtenances, influent gate valve, wall penetrations, equipment pads, all control room electrical panels and control equipment and other associated work as detailed in the "Cost Sharing Breakdown" dated February 26, 2021 provided by the City's Engineer, Hazen & Sawyer, hereto attached as **Exhibit A** incorporated by reference.
- **R:5.** Any work completed on the City Facility that is outside of the Diversion Improvements scope as detailed in the "Cost Sharing Breakdown" and in the Project Definition Report developed by Kimley-Horn and Associates dated February 2018 is referred to as "Betterment" and shall be financed and paid for by the City.
- **R:6** HRSD and the City agree that it is in the best interest of the parties to have the Diversion Improvements and Betterment designed and constructed as one project.

R:7 HRSD agrees to reimburse the City for that portion of the costs of the design and construction of the Diversion Improvements attributable to the City Facility under the terms and conditions of this Agreement.

<u>TERMS</u>

NOW THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

XIV. DESIGN OF IMPROVEMENTS

XIV. Plans and Specifications

- XIV. The City will contract with Hazen & Sawyer ("City's Engineer") to prepare plans and specifications for the Diversion Improvements and Betterment of the City Facility.
- 2. The City's Engineer will follow the standard HRSD Development Process, which includes the completion of the Project Information Form, Flow Calculations Worksheet, Pressure Analysis Request Form, Pump Station Information Form and the submission of a full set of Engineering Plans.
- 3. The City's Engineer, along with HRSD and the CITY, will meet to coordinate, review and approve a set of final construction documents ("Final Plans and Specifications") for the Diversion Improvements. This requirement may be waived by HRSD if there are no changes to the plans submitted through the Development Process.

B. Payment of the Design Costs

XIV. HRSD shall reimburse the City for the design costs attributable to the Diversion Improvements in one lump sum payment due at the completion of the design phase. City shall provide HRSD with an invoice detailing HRSD's share of the design costs. Within thirty (30) days of its receipt of such invoice, HRSD shall reimburse the City for the costs detailed in the invoice. The current estimated design cost is \$93,523. HRSD and the City agree that HRSD's share of the design

cost will be no more than eighty-one percent (81%) of the total design cost.

II. CONSTRUCTION OF IMPROVEMENTS

XIV. Cost of Construction

- XIV. The total cost of the Diversion Improvements, as more particularly described in the Final Plans and Specifications prepared by the City Engineer shall include:
 - XIV. Cost of construction of the Diversion Improvements rendered by the Contractor;
 - b. Costs of construction contract administration rendered by the City's Engineer;
- 2. The current estimated cost of the construction of the Diversion Improvements is \$610,000.

B. Approval of Final Plans and Specifications; Contractors; Change Orders

- HRSD and the City agree that they will jointly review and approve the Final Plans and Specifications. This approval shall be in writing before any construction work begins.
- 2. The City shall acquire all necessary plan approvals related to City Facility prior to the award of the construction contract.
- 3. Contractors shall be responsible for all necessary permits necessary for the Diversion Improvements.
- 4. City will review and approve shop drawings related to the City Facility. HRSD will review and approve pump shop drawings related to the Diversion Improvements.

5. HRSD will review and approve change orders related to the Diversion Improvements. The City will review and approve change order related to Betterment.

C. Payment of Improvement Costs

- XIV. The Improvement Costs shall be apportioned between the City and HRSD as follows:
 - XIV. Using the City Engineer's final design cost estimate, a percentage split will be determined between the Diversion Improvements and the Betterment.
 - b. HRSD will be responsible for eighty-one percent (81%) of the total cost to cover the cost of the Diversion Improvements.
 - c. The CITY will be responsible for nineteen percent (19%) of the cost.
 - d. Changes to the initial construction costs ("Change Order") shall be resolved as follows:
 - (XIV) HRSD shall be solely responsible for Change Orders related to Diversion Improvements; and
 - (2) The City shall be responsible for Change Orders related to Betterment.
 - (3) Change Orders related to design errors, omissions or changed field conditions shall be the responsibility of the City.
- 2. During the course of construction, the City shall pay the contractors and individuals or entities providing materials and services related to the Project. HRSD shall reimburse the City for all payments made on its behalf in one lump sum payment upon final completion of the construction phase (as determined in accordance with the Hampton Roads Planning District Commission (HRPDC) Regional Construction Standards). The City shall provide HRSD with an invoice detailing the Diversion Improvement Costs. Within thirty (30) days of its receipt of such invoice, HRSD shall reimburse the City for the Diversion

Improvement Costs as detailed in the invoice.

 In conjunction with the above, and for additional clarity, it is agreed that HRSD shall pay its share of the construction administration costs to the City in one lump sum upon final completion of the construction phase (as determined in accordance with the HRPDC Regional Construction Standards).

D. Operation and Maintenance of the Improvements during and after Construction

1. The City shall be responsible for the operation and maintenance of the City Facility during and after construction.

III. SCHEDULE

The construction began August 9, 2021 and will be substantially complete by May 6, 2022 If the construction dates are substantially delayed, HRSD reserves the right to terminate this Agreement.

IV. OBLIGATIONS OF HRSD AND THE CITY

A. Bidding of the Improvements

- 1. The City shall issue bidding documents for the construction of the Diversion Improvements and will administer the advertisement and bidding process.
- 2. The City will receive bids for the construction of the Project. All bids received will be reviewed and approved by the City and HRSD prior to award of the construction contract. The City and HRSD shall negotiate in good faith to resolve financial matters with regards to the bidding of the Project. The bidding procedure shall be conducted in accordance with the Virginia Public Procurement Act.

XIV. Administration

The City shall provide contract administration of the Project. HRSD shall

reimburse the City for the contract administration of the Diversion Improvements rendered by the City's Engineer.

D. Inspection

The City shall provide inspection for the Diversion Improvements. The inspector(s) shall have the authority to ensure that the Diversion Improvements are constructed in accordance with the Final Plans and Specifications. HRSD will not provide reimbursement for inspection services.

F. <u>Correction of Construction Defects</u>

The CITY shall require the Contractors to provide a performance and payment bond for the full amount of the construction of the Diversion Improvements. The construction contract shall also provide for a warranty of the Contractor's work against construction defects in the Diversion Improvements and shall require the Contractor to correct such defects that are reported by the City within one (1) year of the final acceptance of the Improvements.

V. GOVERNING LAW

This Agreement shall be deemed to be a Virginia Contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

VI. TERMINATION

Anything herein or elsewhere to the contrary notwithstanding, this Agreement and the obligations of the parties hereunder may be terminated by the CITY or HRSD in the event that the other party breaches or violates any material provision of this Agreement or fails to perform any material covenant or agreement to be performed by either party under the terms of this Agreement and such breach, violation or failure is not cured within sixty (60) days of the defaulting party's receipt of written notice of such breach from the non-defaulting party; or by mutual agreement of the CITY and HRSD.

VII. NOTICE

Any notice, communication or request under this Agreement shall be provided in writing by either (a) certified mail, return receipt requested, postage prepaid, or (b) a nationally recognized overnight delivery service (next business day service), or (c) hand-delivery, if the receipt of the same is evidenced by the signature of the addressee or authorized agent, and addressed to the following:

For: HRSD

If by U.S. Postal Service: General Manager P. O. Box 5911 Virginia Beach, VA 23471-0911 Telephone: (757) 460-4242

If by Overnight Mail: General Manager 1434 Air Rail Avenue Virginia Beach, VA 23455

With Copy to:

Janice P. Anderson Kellam, Pickrell, Cox & Anderson PC 403 Boush Street, Suite 300 Norfolk, VA 23510

For: City of NORFOLK

Director
City of Norfolk Department of Utilities
401 Monticello Avenue
Norfolk, VA 23510
Telephone:
Facsimile:

With Copy to:

City Attorney
9th Floor – City Hall
810 Union Street
Norfolk, VA 23510
Telephone:
Facsimile:

VIII. ASSIGNMENT

No party may assign its rights in this Agreement without the prior written consent of the other party.

IX. AMENDMENT

This Agreement may be amended only by a written instrument duly executed by the parties.

X. SEVERABILITY

If any provision of this Agreement or the application thereof to any circumstance shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall continue to be valid, in effect and enforceable to the fullest extent permitted by law.

XI. <u>DAMAGES</u>

If by omission that constitutes negligence or willful misconduct or failure to abide by engineering standards or failure to abide by the Final Plans and Specifications described herein, the negligent party shall be responsible for the payments for damages to any other party to this Agreement.

XII. INSURANCE

HRSD and the CITY have the right to review and approve insurance coverage in the various insurance categories that HRSD and the CITY deem necessary to be carried by the Contractor or any other parties to this Agreement. Proof of insurance shall be provided at the request of HRSD or the CITY and the insurance coverage shall be maintained during the term of this Agreement.

XIII. TERM OF AGREEMENT

The term of the Agreement will commence on the date the Agreement is entered into and be completed when each party has completely performed its obligations hereunder.

XIV. FORCE MAJEURE

In the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond the control of the CITY or HRSD or the Contractor and without their fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargos, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or

times for performance of the obligations of the parties shall be extended for the period of the enforced delay.

XV. <u>INDEPENDENT CONTRACTOR</u>

If the Contractor(s) hire subcontractors or independent contractors, HRSD and the CITY have the right to approve them by reviewing their requisite experience and knowledge to complete the work assigned.

XVI. <u>SUBCONTRACTOR</u>

If any Contractors or subcontractors are selected by any party to this Agreement for completion of the work contemplated herein, HRSD has the right to approve the same.

XVII. WAIVER

No waiver of breach of any term or provision of this Agreement shall be construed to be, or shall constitute, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the parties waiving the breach.

The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

XVIII. <u>INTEGRATION</u>

This Agreement constitutes the entire understanding among the parties. No provision of this Agreement may be waived, modified or amended except by an instrument signed by the party against whom the enforcement of such waiver, modification or amendment is sought. No waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to comply.

IN WITNESS WHEREOF, the Hampton Roads Sa has caused this Agreement to be signed on its be accordance with authorization granted at its regulation.	half by its General Manager in
2021	
НАМРТО	ON ROADS SANITATION DISTRICT
Ву	d G. Henifin, P.E., General Manager
Edwar	d G. Henifin, P.E., General Manager
COMMONWEALTH OF VIRGINIA, CITY OF VIRGINIA BEACH, to-wit:	
The foregoing Agreement was acknowledg, 2022, by Edward G. Henit	
No.	otary Public
My commission expires:	
Registration No.:	

•	folk has caused this Agreement to be signed by o Resolution adopted by the City Council on						
	CITY OF NORFOLK						
·	Dr. Larry H. Filer II, City Manager						
ATTEST:							
City Clerk							
COMMONWEALTH OF VIRGINIA, CITY or COUNTY OF, to	o-wit:						
, 2022, by Dr. Larr	nowledged before me this day of y H. Filer II, City Manager, City of NORFOLK,						
Virginia.							
-	Notary Public						
My commission expires:							
Registration No.:							
Approved as to Form and Correctness:	Approved as to Content:						
Deputy City Attorney	Director of Utilities						

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